

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PETER A. SPALLUTO)	
and ACCESS WITH SUCCESS, INC.,)	
Plaintiffs)	CIVIL ACTION NO.: 05-cv-10385EFH
)	
v.)	
)	
HDP, INC.,)	
Defendant)	
)	

**MEMORANDUM IN SUPPORT
OF PLAINTIFFS' MOTION TO CONTINUE TRIAL**

On April 2, 2007, the plaintiffs filed their opposition to the defendant's motion to dismiss for their alleged failure to attend depositions. In support of their opposition, the plaintiffs stated that Mr. Spalluto is currently in poor health. A medical report from Mr. Spalluto's primary care physician was attached as Exhibit A to the memorandum in support of their opposition.

In support of the present motion to continue the trial pursuant to L.R. 40.3, the plaintiffs also offer Exhibit A. Karin Zachow, M.D. is Mr. Spalluto's primary care physician. She states, in her letter of March 22, 2007, "It would pose an unreasonable health risk for Mr. Spalluto to travel to Massachusetts at any time in the winter months." Currently, Mr. Spalluto is convalescing from a bout of pneumonia. He was hospitalized in the Miami VA Medical Center during the first two weeks of February 2007. (Exh. A). Pneumonia is a leading cause of death in quadriplegics. (Exh. A). Air travel and exposure to cold weather will significantly increase Mr. Spalluto's risk of death due either to pneumonia or to aggravation of his "already significant coronary artery disease."

(Exh. A). Dr. Zachow has strongly recommended against Mr. Spalluto traveling to Massachusetts to participate in a trial on April 9, 2007. (Exh. A).

WHEREFORE, the plaintiffs pray that their motion will be granted and that the Court will stay further proceedings, including the trial on April 9, 2007, until Mr. Spalluto's health stabilizes, such that he is able to travel to a deposition in Boston during the summer months.

Respectfully submitted, The Plaintiffs,
Peter A. Spalluto and Access With Success,
Inc.

By their Attorneys,

/s/Nicholas S. Guerrero
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CERTIFICATE OF SERVICE

I, Nicholas S. Guerrero, hereby certify that the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent, via First-Class Mail, to those indicated as non-registered participants, on this 3rd day of April 2007.

Dated: April 3, 2007

/s/Nicholas S. Guerrero
Nicholas S. Guerrero



DEPARTMENT OF VETERANS AFFAIRS

Medical Center
1201 Northwest 16th Street
Miami FL 33125-1693

In Reply Refer To:

- 22 March 2007

To Whom It May Concern:

My patient, Mr Peter Spalluto, is quadriplegic and therefore at high risk for respiratory complications. He has been under Veteran's Administration medical care since his injury in 1966. During the first two weeks of February 2007, Mr Spalluto was hospitalized with pneumonia at the Miami VA Medical Center. A leading cause of death in quadriplegics is pneumonia; he is still convalescing from that illness.

It would pose an unreasonable health risk for Mr Spalluto to travel to Massachusetts at any time in the winter months. The cold weather can elicit bronchospasm which would exacerbate the pulmonary problem. He was prescribed home oxygen treatment at the time of discharge from the acute care hospital-both flying and cold weather could be expected to drive his oxygen levels below acceptable even with supplemental oxygen. Low oxygen tension will worsen his already significant coronary artery disease. For health related reasons, I have strongly recommended against traveling to Massachusetts to participate in a trial on April 9, 2007.

Should you require further information, I can be contacted at the Miami VA Spinal Cord Injury/Disease Center at 305 575 3174 during normal business hours


Karin Zachow MD, CWS